144 Ind. 142, 43 N. E. 9, 36 L. R. A. 413; *Frommer* v. *Richmond*, 31 Gratt. 646, 31 Am. Rep. 746; *St. Louis* v. *Green*, 70 Mo. 562. This doctrine seems to be supported by the great weight of authority. *Kentz* v. *Mobile*, 120 Ala. 623, 24 South. 952; *City of Terre Haute* v. *Kersey* (Ind., 1902), 64 N. E. 469; *Ex parte Gregory*, 20 Tex. App. 210, 54 Am. Rep. 516; *Marmet* v. *State*, 45 Ohio St. 63, 12 N. E. 463; *Burlington* v. *Unterkirchen*, 99 Ia. 401, 68 N. W. 795. There would seem to be little dispute about the right to require a license from hackmen and others who have special privileges in the streets. *Scudder* v. *Hinshaw*, 134 Ind. 56, 33 N. E. 791; *Washington* v. *McGeorge*, 146 Pa. St. 248, 23 Atl. 222; *Covington* v. *Woods*, 98 Ky. 344, 33 S. W. 84. But the power to license must be plainly conferred. DILLON ON MUNICIPAL CORPORATIONS (3rd. ed.) 361; *Ex parte Garza*, 28 Tex. App. 381, 19 Am. St. Rep. 845; *Smith* v. *McDowell*, 148 Ill. 51, 22 L. R. A. 393, 35 N. E. 141. And the license must not be unreasonable. *Livingstone* v. *Paducah*, 80 Ky. 656. In *Chicago* v. *Collins*, 175 Ill. 445, 49 L. R. A. 408, 51 N. E. 907, it was intimated, that such a license could not be imposed even by leglislative authority, but this was *dictum*, for the court held that the statute did not authorize such a license. On the general subject of licenses for vehicles see note to *Tomlinson* v. *Indianapolis*, 36 L. R. A. 413.

TRUSTS—PURCHASE OF CLAIM AGAINST BENEFICIARY BY TRUSTEE.—A cestui que trust owed her attorney $1658.00 and gave an order for that amount on her trustee. The obligation was not payable out of the trust estate nor had it any connection with the trust funds. The trustee purchased the claim from the attorney for $1350.00. In a suit for a new trial of the action in which final settlement had been made, and to charge the trustee for the profits in the transaction, *Held*, that the petition should be dismissed. *Bush* v. *Webster* (1903), — Ky. —, 72 S. W. Rep. 364.

While recognizing the "salutary principle that the trustee cannot deal to his advantage with the trust estate, and that the profits made by him therein must go to the cestui que trust," the court held that the principal case did not come under it. The ground of distinction was that the trustee was not dealing with the trust estate in the transaction, and that to the extent and for the purpose of settling this claim, which was an individual one, and not against the trust estate, there was no fiduciary relation between the parties. No authorities are cited, and it seems there is no similar case in the reports. See generally PERRY ON TRUSTS, sec. 428 and cases cited; 1 LEWIN ON TRUSTS (Scott's Am. ed.) 276; 2 POMEROY EQ. JUR. 1075; *Mitchell* v. *Colburn* (1883), 61 Md. 244; *Schoonmaker* v. *Van Wyck* (1860), 31 Barb. 457; *King* v. *Cushman* (1866), 41 Ill. 31, 89 Am. Dec. 366.

VENDOR AND PURCHASER—MEASURE OF DAMAGES FOR BREACH OF CONTRACT TO CONVEY LAND.—Action for damages upon a breach of contract to convey 400 acres of land at $1.50 per acre, which the plaintiffs paid at the time of the sale. Prior to making the sale to the plaintiffs, the defendant corporation had, through its land department, sold and conveyed to a third person the most valuable 40 acres of the tract, of which fact the defendant corporation had no knowledge by reason of the land department's failure to note the sale upon its landbooks. As soon as the mistake was discovered the defendant corporation notified the plaintiffs and offered to rescind the contract and return the purchase money or to give plaintiffs a deed for the 360 acres to which it had title and return the purchase price ($60) of the 40 acres with legal interest, but the plaintiffs refused both offers. *Held*, that the measure of damages was the value of the forty acres at the time the breach occurred. *Krepp* v. *St. Louis & S. F. R. Co.* (1903), — Mo. —, 72 S. W. Rep. 479.

The courts are irreconcilably in conflict upon the rule as to the measure of damages upon a breach of contract to convey land. Since the decision in *Flureau* v. *Thornhill*, 2 W. Bl. 1078, the English courts and the majority of the American courts have indorsed the rule that if the vendor, acting in good faith, refuses to convey because of a previously unknown defect, the vendee is entitled to nominal damages only, in addition to any part of the purchase price he may have paid, together with interest. *Bain* v. *Fothergill*, L. R. 7 H. L. 158; *Hammond* v. *Hannin*, 21 Mich. 374, 4 Am. Rep. 490; *Pumpelly* v. *Phelps*, 40 N. Y. 64. Some American courts have departed from this doctrine, insisting that it is immaterial whether the vendor has acted in good or bad faith, that having entered into a contract to sell, he should bear the burdens of self-imposed obligations. *Hopkins* v. *Lee*, 6 Wheat. 109, 5 L. ed. 218; *Kirkpatrick* v. *Downing*, 58 Mo. 32, 17 Am. Rep. 678; *Hartzell* v. *Crumb*, 90 Mo. 629, 3 S. W. 59.

WILLS—DEVISE OF RENTS AND PROFITS.—Testator stated in his will that his wife and child should be supported from the proceeds or income of his estate, and that his wife should not have the power of disposing of any portion of the estate. The lower court construed the will to have force and effect only until the child was educated and arrived at the age of twenty-one years, and then the property to pass by descent under the statute, the widow taking one-third for life, and the child two-thirds in fee, and the other one-third in remainder. Upon appeal, the widow contended that she should have the whole estate for her natural life, subject only to the support and education of the child until it reached the age of twenty-one years. *Held*, that the wife took a life estate in one half of the property, with remainder to the testator's child, and the child took an estate in fee in the other half. *Mays* v. *Karn* (1903), — Ky. —, 72 S. W. Rep. 1111.

The court bases its conclusion upon the principle as laid down by JARMAN, WILLS (5th ed.) sec 797, that the devise of the income of land passes the land itself, and so the wife and child would be joint tenants; the restriction, however, that the wife should not have the power of disposing of any of the property, making her share but a life interest. Courts will ordinarily, in such cases as the above, give the wife a life estate, with the remainder to the child. *Koenig* v. *Kraft*, 87 Ky. 95, 7 S. W. 622.

WILLS—VESTING OF ESTATES.—Testator gave all his property to his wife for life and provided that after her death the property should be divided into two equal parts, one part to go to the brother and sister of the wife. Testator left surviving a brother of his wife who died childless but testate, before the death of the wife. *Held*, that the estate of the brother did not vest until the wife's death and therefor did not pass by the brother's will. *In re Abbiston's Estate* (1903), — Wis. —, 94 N. W. Rep. 169.

This is undoubtedly against the weight of authority and the rule is clearly laid down by Justice Gray in the case of *McArthur* v. *Scott*, 113 U. S. 340, 378: "For many reasons, not the least of which are that testators usually have in mind the actual enjoyment rather than the technical ownership of their property, and that sound policy as well as practical convenience require that titles should be vested at the earliest period, it has long been the settled rule of construction in England and America that estates legal or equitable given by will should always be regarded as vesting immediately unless the testator has by very clear words manifested an intention that they should be contingent upon a future event."